



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

Tuscarora Field Office
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Elko, Nevada 89801

http://www.blm.gov/nv/st/en/fo/elko_field_office.html

In Reply Refer To:
4120 (LLNVE0200)
RIPS# 018320

DECISION RECORD

PROJECT NAME: McKinnley FFR Water Gap DNA
OFFICE: Tuscarora Field Office, Elko District BLM
SUBJECT CODE: 8100 Range Improvements, RIPS#: 018320, 4120 Grazing Management
NEPA REGISTER NUMBER: DOI-BLM-NV-E020-2015-0029-DNA
LOCATION: Susie Creek Basin, Elko County, Nevada
LEGAL DESCRIPTION: T35N, R53E, Sections 1, 2, 11, 12.
CONTACT: Carol Evans, Fisheries Biologist, telephone: (775) 753-0349; email: cevens@blm.gov

PROPOSED ACTION SUMMARY

The Tuscarora Field Office, Elko District, Bureau of Land Management (BLM), is proposing to create a water gap for livestock along Susie Creek in the northernmost corner of the McKinnley FFR Allotment (refer to the attached maps). The Proposed Action consists of constructing approximately 850 feet of new fence on public land; repairing approximately 0.3 miles of existing fence on public land; removing approximately 0.4 miles of fence from private land; relocating a cattle guard from private land to public land; and installing a new cattle guard on public land. The purpose of the water gap is to provide an alternate source of water for livestock in the McKinnley FFR Allotment so that prescriptive grazing practices can be more effectively applied to management units in both upstream and downstream areas along Susie Creek. The proposed water gap would be one of a number of projects implemented in the Susie Creek Basin to improve upland and riparian habitat conditions for Greater Sage-Grouse, Lahontan Cutthroat Trout and other species of wildlife.

PROPOSED DECISION

It is my proposed decision to implement the Proposed Action described in the Determination of NEPA Adequacy (DNA) DOI-BLM-NV-E020-2015-0029-DNA. Based on the review of existing NEPA analysis of potential environmental impacts in the Environmental Assessments (EA's) referenced on the DNA worksheet, the Proposed Action is adequately analyzed for NEPA compliance and is in conformance with the Elko Resource Management Plan (RMP).

RATIONALE

Environmental impacts of fence construction and removal as well as installation of cattleguards for purposes of managing livestock and improving stream and riparian habitat conditions within the Susie Creek Basin were adequately analyzed in the 2006 Susie Fire and Basco Stabilization and Rehabilitation Plan EA's (BLM/EK/PL-2006/021 and BLM/EK/PL-2006/025, respectively) and/or the Lower Susie Creek Fence EA (EA-NV-010-90-47). Direct, indirect and cumulative impacts are the same, but much narrower in scope, as those analyzed in the EA's referenced above. Although new directives applicable to the Greater Sage-Grouse have been issued, these directives would not substantially change the analysis for the proposed action. More fence would be removed than constructed (approximately 2112 feet vs 850 feet), while placement of flight diverters on the new and existing fence would reduce collision hazards. Collectively, these actions would result in negligible to beneficial impacts to Sage-Grouse.

The proposed action is consistent with the 1987 Record of Decision (ROD) for the Elko Resource Management Plan (RMP) wildlife objective to conserve and enhance terrestrial, riparian and wildlife habitat by improving high priority riparian/stream habitat. Susie Creek is identified as a high priority stream in the RMP.

No cultural resources were found in the project area during an inventory completed in April of 2015. A negative report (BLM Report No 1-3120) for the project proposal was submitted to the State Historic Preservation Officer on May 5, 2015.

AUTHORITY

Authority for the actions contained in this proposed decision is found in 43 CFR §4120.3-1, 4160.1, 4160.2, 4160.3, 4160.4.

PROVISIONS FOR PROTEST, APPEAL AND PETITION FOR STAY

Protest

In accordance with 43 CFR §4160.2, any applicant, permittee, lessee or other interested public may protest the proposed decision under §4160.1 of this title, in person or in writing to the Bureau of Land Management, Richard E. Adams, Tuscarora Field Office Manager (authorized officer), 3900 E. Idaho Street, Elko, Nevada, 89801 within 15 days after receipt of this decision. The protest, if filed, must clearly and concisely state the reason(s) as to why the proposed decision is in error.

In accordance with 43 CFR §4160.3 (b), should a timely protest be filed with the authorized officer, the authorized officer, at the conclusion to his/her review of the protest shall serve his/her final decision on the protestant and the interested public.

In accordance with 43 CFR §4160.3 (a), at the conclusion of the 15 day protest period and in the absence of a protest, the proposed decision will become the final decision of the authorized officer without further notice.

In accordance with 43 CFR §4160.3 (c) & (f), a period of 30 days following receipt of the Final Decision or 30 days after the date the Proposed Decision becomes final is provided for filing an appeal and petition for stay of the decision pending final determination on appeal.

Appeal and Petition for Stay

In accordance with 43 CFR §4160.4, any person whose interest is adversely affected by a final decision of the authorized officer may appeal the decision for the purpose of a hearing before an administrative law judge and may also petition for a stay of the decision pending final determination on appeal. The appeal and petition for stay must be filed within 30 days following receipt of the final decision or 30 days after the date the proposed decision becomes final. Appeals and petitions for a stay of the decision shall be filed at the office of the authorized officer, see Protest above. Additionally the person appealing must serve a copy of their appeal and petition for stay on any person named in the decision including the name to which the decision is addressed, those listed at the end of this decision, and the Office of the Solicitor, Pacific Southwest Region, U.S. Department of the Interior, 2800 Cottage Way, Room E-2753, Sacramento, CA 95825-1890 within 15 days of filing the appeal and petition for stay. Appellant needs to be able to document service to any other person named in the decision and the Solicitor.

In accordance with 43 CFR §4.470, the appeal shall state the reasons, clearly and concisely, why the appellant thinks the final decision of the authorized officer is in error.

A petition for stay, if filed, must show sufficient justification based on the following standards (43 CFR §4.471(c)):

- (1) The relative harm to the parties if the stay is granted or denied;
- (2) The likelihood of the appellant's success on the merits;
- (3) The likelihood of immediate and irreparable harm if the stay is not granted; and,
- (4) Whether the public interest favors granting the stay.

The appellant requesting a stay bears the burden of proof to demonstrate that a stay should be granted.

Any person named in the decision from which an appeal is taken (other than the appellant) who wishes to file a response to the petition for a stay may file with the Hearings Division a motion to intervene in the appeal, together with the response, within 10 days after receiving the petition. Within 15 days after filing the motion to intervene and response, the person must serve copies on the appellant, the Office of the Solicitor and any other person named in the decision (43 CFR §4.472(b)).

/s/ Richard E. Adams
Richard E. Adams
Field Manager, Tuscarora Field Office

6/25/2015
Date